



Determination 2018/023

Regarding the refusal to grant an exemption from the requirement to obtain a building consent for alterations at 32 Titirangi Road, New Lynn, Auckland

Summary

This determination considers whether a change of use has occurred as a result of alterations to the building, and whether the authority was correct to refuse to grant an exemption under Schedule 1(2).

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
 - the owner of the building, Preeya Family Trust (“the applicant”), acting through an agent
 - Auckland Council (“the authority”²), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to refuse to issue an exemption from the requirement to obtain a building consent under Schedule 1(2) of the Act for alterations to a building, originally consented as a double garage with a bathroom. The refusal arose both because the building work has already been carried out and because the authority is not satisfied the work complies with the Building Code (First Schedule, Building Regulations 1992).
- 1.4 The matter to be determined³ is therefore whether the authority has correctly exercised its power of decision in refusing to grant an exemption from the requirement to obtain a building consent, under Schedule 1(2) of the Act.
- 1.5 The determination application refers to matters concerning the Resource Management Act 1991 (“RMA”), which is outside the scope of this determination.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

² After the original building was completed, Waitakere City Council was transitioned into Auckland Council. The term “authority” is used for both.

³ Under sections 177(1)(b) and 177(3)(c) of the current Act. In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2. The building and background

2.1 The building is on a residential property with three units. Originally constructed as a double garage with a bathroom, the building is timber framed on a concrete slab foundation, with a truss roof. It has two bedrooms, a bathroom, and lounge. It has a mixture of vertical timber cladding, and metal horizontal wall cladding, with metal longrun roofing.

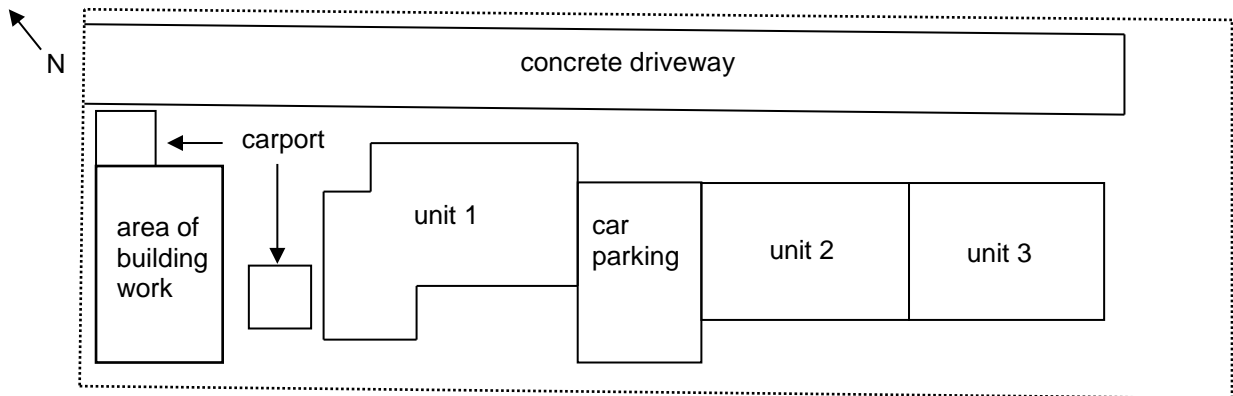


Figure 1: Existing site plan (not to scale)

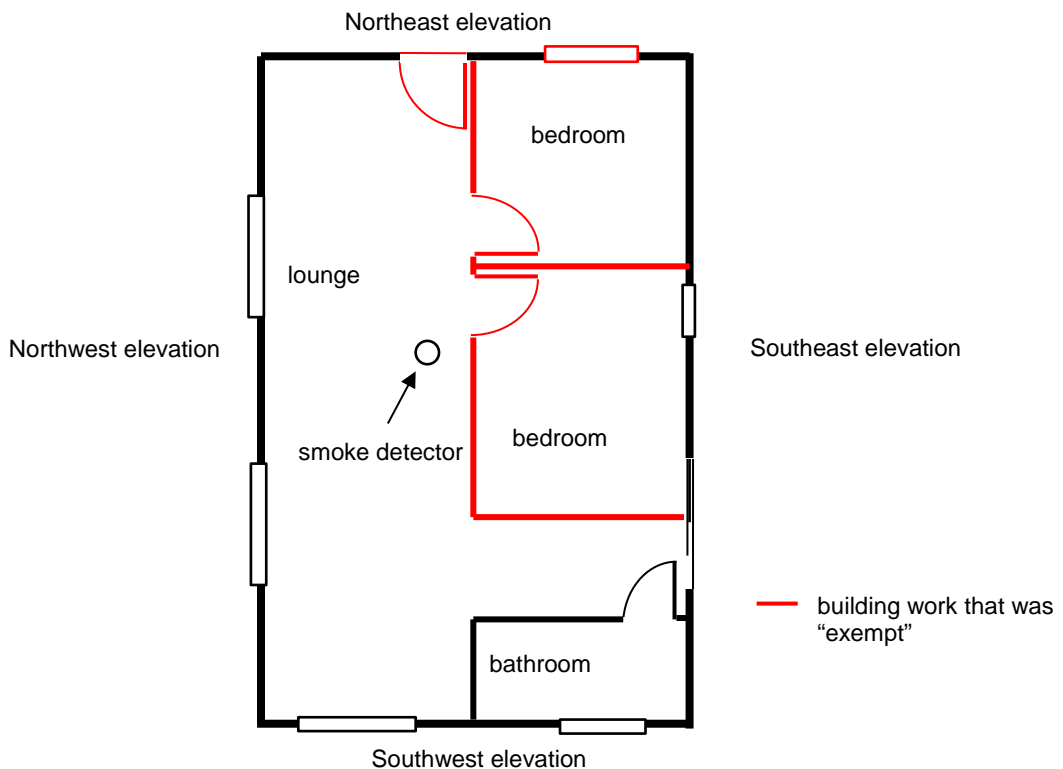


Figure 2: Existing floor plan (not to scale)

2.2 The 1997 building consent

- 2.2.1 The authority issued a building consent⁴ on 29 July 1997 (“the 1997 building consent”) for the construction of the building. The work is described in the 1997 building consent application as a “double garage with shower and toilet”.
- 2.2.2 A resource consent was subsequently granted by the authority for the building on 20 August 1997.
- 2.2.3 The 1997 building consent drawings specified :
- a concrete slab over a vapour barrier
 - R2.4⁵ insulation to ceiling and R1.8 insulation to the external walls
 - metal wall cladding over building paper, with the cladding acting as the bracing for the building
 - 9.5mm plasterboard linings to the walls and ceilings
 - roof trusses and metal longrun roofing over building paper.
- 2.2.4 The 1997 building consent documents include plumbing and drainage specifications. It is not clear from the records what was installed, but the information provided in the application for an exemption (refer to paragraph 2.5.4) suggests it was a shower, toilet and hand basin. The as-built plumbing plan, dated 16 October 1997, shows a gully trap and a terminal vent connecting to the main drain.
- 2.2.5 The following inspection comments were noted on the 1997 building consent file by the authority:
- an undated concrete slab foundation inspection was carried out, with the authority noting the damp proof course was “OK”
 - the drainage plan was received and passed on 16 October 1997
 - the final inspection was carried out 3 July 1998, with a note to issue the code compliance certificate.
- 2.2.6 The authority issued a code compliance certificate on 10 July 1998. The code compliance certificate lists the intended use of the building as “Unknown” and the building work is described as a “Garage”.
- 2.2.7 The applicant has advised he purchased the property in 2001.

2.3 The 2005 building consent

- 2.3.1 The authority visited the property on 13 August 2004. The reason for this visit is not clear, but the authority subsequently wrote to the applicant advising:

...unauthorised building work has been carried out on the property, being:

1. The garage at the front of the property has been converted into a minor household unit.
2. A carport has been erected attached to the garage at the front of the property.

The building work is unauthorised because no building consent has been obtained for it.

⁴ Under the Building Act 1991 (“the former Act”)

⁵ R-values are the measure of how well an object prevents heat flow. The higher the value, the more effective the insulation is at preventing heat flow.

- 2.3.2 In a letter dated 26 September 2004 the authority responded to a letter sent by the applicant (which I have not seen). The authority recommended a building consent be applied for to remove the “unauthorised” building work.
- 2.3.3 In a letter dated 10 November 2004 the authority extended the deadline for removing the “unauthorised” building work.
- 2.3.4 On 10 January 2005 the authority issued a building consent (ABA 20044205) (“the 2005 building consent”) for the demolition of the “unauthorised work”. The 2005 building consent drawings state “[Existing] garage converted into household unit (unconsented)”.
- 2.3.5 The building shown in the 2005 building consent drawings shows the building consists of two bedrooms, a bathroom, a kitchen and lounge, with a carport attached to the front of the building.
- 2.3.6 The building work proposed included:
- removing the internal partitions that formed the two bedrooms
 - removing the existing wall and reinstating the roller door
 - removing the window to one of the bedrooms and recladding with galvanised metal
 - removing the tub, sink and kitchen bench, and sealing off all plumbing below the surface
 - the carport to be demolished.
- 2.3.7 With respect to the garage door, in a letter to the Ministry dated 15 February 2018 (refer to paragraph 3.6), the applicant advised the authority required the garage door to be reinstated, but this work was not done as there is no lintel to support the garage door.
- 2.3.8 I understand the building work listed in the consent was not completed and a code compliance certificate was not issued.

2.4 The 2016 notice to fix

- 2.4.1 On 17 October 2016 the authority carried out a site inspection and observed “alterations to the garage have been carried out”. Subsequently, a notice to fix (No. 7154) dated 21 October 2016 was issued by the authority. The notice to fix listed the particulars of contravention or non-compliance as follows:

Contrary to section 40 of the Building Act 2004, the following building works have been carried out without first obtaining a building consent:

- Installation of additional sanitary fixture compromising of kitchen sink and laundry tub and associated plumbing and drainage fitting and pipework within the garage.

Contrary to section 114 and section 115 you have:

- Changed the use of a building from garage to minor house hold unit.

- 2.4.2 The remedies to rectify the contravention or non-compliance were noted as:

Remove the unauthorised building works and reinstate the garage back to its permitted state; Or:

Pursue any other option/s to make the building works fully comply with the Act and Regulations.

2.4.3 On 9 December 2016 the authority carried out another inspection, and in a letter, dated 14 December 2016, the authority informed the applicant:

...the matters have been satisfactorily addressed and all matters pertaining to the [notice to fix] have been resolved.

2.4.4 I am of the understanding the kitchen sink and laundry tub were removed at the time of the inspection. At this point, the building contained two bedrooms, a bathroom, and lounge.

2.5 The application for exemption under Schedule 1(2)

2.5.1 On 4 October 2017 a designer, engaged by the applicant, submitted an application to the authority to exempt building work under Schedule 1(2). In respect to the reason for this application, in a letter to the Ministry, dated 15 February 2018 (refer to paragraph 3.6), the applicant advised he disagreed with the 2016 notice to fix and “after numerous discussions with [the authority], one building inspector advised me to make application for Exempt Works”.

2.5.2 The application described the work as:

1. Garage door changed to opening door
2. 2 rooms added to make bedrooms
3. Garage changed to habitable space.

2.5.3 The application included:

- drawings of the existing site, floor plan and sections
- a change of use report dated 25 August 2017
- a fire report dated 19 September 2017.

2.5.4 The change of use report, which included photographs of the building, stated the following (in summary):

- The garage is changing its use from “Non-Habitable to Habitable Use”.
- The building was constructed in 1997 as a “Sleepout Building with Toilet/Hand Basin & Shower” and not as a garage.
- This is an application under Schedule 1(2)⁶ to confirm removing the garage door and installing an aluminium door, cladding the new wall, and internally lining the framing is exempt under Schedule 1(8). Also, the construction of internal walls is exempt under Schedule 1(11).
- The existing garage as constructed complies with the requirements of the Building Code for use as a habitable use and can therefore be changed to a habitable use.

2.5.5 The fire report, written by the designer, stated the following (in summary):

- The building will be used as a sleepout in conjunction with Unit 1.
- The building is separated by distance from the other buildings on site.
- An assessment of the building against the requirements to satisfy C/AS1⁷, showed smoke alarms were required but no fire-rating was necessary.

⁶ The application referenced Schedule 1(k), which is the former name for Schedule 1(2).

⁷ Acceptable Solution for Buildings with Sleeping (residential) and Outbuildings (Risk Group SH) .

2.6 The authority's refusal to grant an exemption

2.6.1 On 19 October 2017 the authority sent a letter (dated 19 September 2017⁸) refusing to grant the exemption. I have summarised the authority's reasons for refusing and the applicant's response in the following table.

Table 1

Authority's reason for refusal (19 October 2017)	Applicant's response (undated)
<ul style="list-style-type: none"> An exemption cannot be considered unless the code compliance certificate for the 2005 building consent has been granted. 	<ul style="list-style-type: none"> The Act doesn't require a previously issued building consent to be completed prior to a new building consent being issued.
Legislative concerns	
<ul style="list-style-type: none"> Resource approval is required to convert the garage into a habitable room or minor household unit. 	<ul style="list-style-type: none"> The building is a sleepout associated with Unit 1.
<ul style="list-style-type: none"> May require development contributions. 	<ul style="list-style-type: none"> Questioned this statement.
<ul style="list-style-type: none"> The application proposed restricted building work but a certificate of work has not been provided. 	<ul style="list-style-type: none"> There is no restricted building work.
Building Code concerns	
<ul style="list-style-type: none"> A wall bracing layout or calculations has not been provided. 	<ul style="list-style-type: none"> The bracing has not been changed or altered.
<ul style="list-style-type: none"> A structural engineering assessment is required to confirm the structural adequacy for the proposed building work – "e.g. garage changes to habitable spaces, particularly the additional load of wall linings onto truss framing". 	<ul style="list-style-type: none"> The structural elements are not proposed to be changed or altered.
<ul style="list-style-type: none"> Evidence of the vapour barrier underneath the existing garage slab is required, or additional vapour barrier/membrane is required. 	<ul style="list-style-type: none"> A vapour barrier has been installed underneath the concrete slab as the core sample shows.
<ul style="list-style-type: none"> There is a lack of stormwater and sanitary sewer connections. 	<ul style="list-style-type: none"> There are no new sanitary or stormwater proposed as that was completed under the 1997 building consent.
<ul style="list-style-type: none"> No weathertightness details provided to establish compliance with Clause E2 for the proposed door and window openings 	<ul style="list-style-type: none"> The new door and window will be installed to the same opening so is exempt under Schedule 1(8).

⁸ The refusal letter is dated before the application was received by the authority. I have assumed the date on the letter is incorrect.

2.6.2 On 26 October 2017 there was correspondence between the designer and the authority regarding the following (in summary):

Designer

- The authority cannot refuse a notification of exempt building work.
- The 2005 building consent is not relevant to the notification of exempt building work.
- The authority does not have the power to advise who carries out the building work.
- The applicant understands how to comply with the Building Act and the authority must process the application.

Authority

- The notice to fix has been complied with and resolved.
- The 2005 building consent was “redundant and excessive” and should be cancelled by the applicant.
- The proposed exempt work is “low risk” and does not require a building consent, subject to a formal notification of withdrawing the 2005 building consent, and a qualified tradesperson carries out the building work.
- The authority is concerned the building work will not comply with section 17 if a qualified tradesperson isn’t engaged.

2.6.3 On 27 October 2017 the authority reaffirmed the exemption application was declined for the reasons previously stated in the 19 September 2017 letter and for the following additional reasons:

- The building work has already been constructed; the proposed alterations were noted as existing on the drawings and the photographs show the building has been altered. Under section 40 the authority cannot grant a retrospective approval.
- The proprietary garage details do not show roof underlay or building wrap to the framing. The authority considers it is unlikely it can be installed without removing the external metal cladding and metal roofing.
- The applicant has completed the building work without supervision by a registered licensed building practitioner and the authority considers the work is unlikely to comply with section 17.

The authority then recommended the building work proposed should be carried out under a building consent.

2.6.4 On the same day the designer responded (in summary):

- The building was originally built as a sleepout and not as a garage.
- The garage door was never installed and the code compliance certificate was issued for the toilet, shower and associated drainage work.
- The consented drawings show building paper underneath the roof and wall cladding, drainage and insulation.
- The notification is to update the authority’s records the building “complies as Habitable Use”.

- 2.6.5 On 31 October 2017 the authority informed the designer exemptions cannot be retrospectively granted and the application for exemption must be rejected.
- 2.6.6 The Ministry received an application for a determination on 22 December 2017.

3. The submissions

- 3.1 The applicant attached a copy of his submission with the application, which stated:
- The determination is sought in regard to the change of use from ‘Non-Habitable to Habitable Use’ and to confirm the construction of the internal partitions.
 - The building consent details the building was constructed as a habitable space, and the garage door was never installed.
- 3.2 The applicant included copies of the following documents:
- 1997 building consent and drawings
 - resource consent for the garage dated 20 August 1997
 - code compliance certificate dated 10 July 1998
 - exemption application under Schedule 1(2), which included drawings, photographs, a change of use report and fire report
 - notice to fix (No. 7154)
 - correspondence between the parties.
- 3.3 On 28 February 2018 the authority acknowledged the determination application. The authority is of the view the building was approved only as a garage for the following reasons:
- the 1997 building consent stated the building was a garage
 - the inspection notes from the final inspection do not refer to a change in the intended use or to alterations to the garage door.
- 3.4 The authority is of view the building has undergone a change of use due to the following reasons:
- There was “unauthorised” work to convert the garage to a minor household unit in 2004.
 - The 2005 building consent was granted but the work was left incomplete and a code compliance certificate was never issued.
 - While the 2016 notice to fix was resolved, the unauthorised work was only partially removed and the building was not reinstated to a garage.
 - The authority received an application for an exemption, which included the change of use.
- 3.5 The authority provided copies of the following documents:
- refusal letter for declining exemption
 - the 2005 building consent drawings
 - code compliance certificate for the building dated 10 July 1998

- photographs of the building dated 2016.
- 3.6 In response to the Ministry’s email requesting clarification regarding the building’s use as a sleepout, the applicant wrote to the Ministry on 15 February 2018 stating (in summary):
- When the property was purchased there was no garage door, only the aluminium door. There is no lintel to support a garage door.
 - An officer of the authority advised the applicant to apply for an exemption and then “withdraw the 1997 building consent”.
 - The evidence of the garage being used as a sleepout comes from the notice to fix, which stated it has changed use to a ‘minor household unit’. The authority will not allow occupation of the building until the change of use is ‘accepted’.
- 3.7 On 1 March 2018 the authority responded to the applicant’s letter reiterating statements previously made regarding the building work and added:
- Exempt building work cannot be considered under following considerations:
1. the application require approval under any other legislation
 2. involved [section] 115 – change of use
 3. A development contribution payable
- 3.8 In regard to the change of use, the authority recognised the garage converting to a sleepout is not a change of use. However, it stated the applicant should consider if any building work was required to ensure the building meet the Building Code requirements for a ‘habitable space’ for example:
- [Damp proof membrane] under the slab
 - Finish floor level in relation to the ground (require 225[mm] to natural ground or 150[mm] to paved surface)
 - appropriate underlay to both roof or wall cladding
 - structural consideration (e.g. bracing to wall – as there is no existing bracing)
 - truss max 1.2[m] centre
 - windows / door opening (air seal & flashing)
- 3.9 On 5 March 2018, the applicant responded to the authority’s letter, reiterating previously made statements that the garage door was not installed when the property was purchased, there has been no change of use, and the building work was approved by the authority.
- 3.10 A draft determination was issued to the parties for comment on 18 April 2018.
- 3.11 On the same day the authority accepted the decision of the draft determination without further comment.
- 3.12 On 24 April 2018 the applicant accepted the decision of the draft determination without further comment.

4. Discussion

4.1 Change of use

- 4.1.1 The applicant is of the view a change of use has not occurred as the building was built as a “habitable building”. In its most recent submission the authority also agreed a change of use had not occurred. This topic has been covered in several

previous determinations⁹. However, I provide the following comments on this matter to provide clarity to the parties.

4.1.2 Under section 114, if an owner is planning to change the use of a building as defined in Schedule 2 of the Building (Specified Systems, Change of Use, and Earthquake-prone Buildings) Regulations 2005 (“the Regulations”), the owner must provide written notice to the authority. An owner must not change the use of the building unless the authority has given written notice the building in its new use will comply to the extent required by section 115.

4.1.3 Section 5 of the Regulations provides:

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

4.1.4 Accordingly, I must consider whether the building’s use, as defined in Schedule 2 of the Regulations, has changed, and whether the Building Code requirements for the building in its new use are additional to or more onerous than the requirements for the building in its old use.

4.1.5 SH (Sleeping Single Home) is defined in Schedule 2 of the Regulations:

detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants’ vehicles, tools, and garden implements

With the following examples of a SH use as:

dwellings or houses separated from each other by distance

4.1.6 I note the constructed and consented building had an “unknown” intended use and while described as a garage, the drawings suggest otherwise due to the inclusion of ceiling and wall insulation, a vapour barrier, building wrap to wall and roof cladding, and a toilet and shower. However, regardless of whether intended as a sleepout or a garage, I am of the view the building’s use was SH.

4.1.7 As the use of the building is still SH, I agree with the parties that a change of use has not occurred.

4.2 The application for an exemption under Schedule 1(2) of the Act

4.2.1 The applicant applied for an exemption under Schedule 1(2) to address the issues raised by the authority about the status of the building and the change of use.

4.2.2 The exemption under Schedule 1(2) is a discretionary exemption for the authority to assess whether to exempt proposed building work from the requirement to obtain a building consent in the circumstances specified:

2 Territorial and regional authority discretionary exemptions

Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of this Act because the authority considers that—

(a) the completed building work is likely to comply with the Building Code or

⁹ Determination 2016/009 *Regarding the issue of notices to fix and the refusal to issue a certificate of acceptance in respect of the conversion of a double garage over a boundary at 1338 Dominion Road, Mt Roskill, Auckland* and Determination 2011/016 *The refusal of a certificate of acceptance and issue of notices to fix for a sleep-out and bedroom addition at 14 Kohekohe Street, New Lynn, Waitakere City*

- (b) if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.
- 4.2.3 The intent of Schedule 1 is to exempt building work that is low risk from requiring a building consent, because the costs associated with obtaining consent are likely to outweigh any benefits that requiring a building consent may offer.
- 4.2.4 Schedule 1(2) is the only exemption that requires a decision from a territorial authority. This exemption allows the authority to use their discretion in exempting any type of building work from requiring a building consent. An exemption may be granted provided the authority considers the building work is likely to comply with the Building Code, or if not, is unlikely to endanger other people or any building.
- 4.2.5 The work described in the application for an exemption (refer to paragraph 2.5.2) has already been completed. An exemption under Schedule 1(2) from the requirement to obtain a building consent cannot be granted for building work that has already been carried out.
- 4.2.6 Accordingly, I conclude the authority was correct to refuse to grant the exemption because the building work had already been completed.
- 4.2.7 While I have found the authority's decision to refuse to grant the exemption was correct, I consider it appropriate to provide guidance on comments regarding exempt building work.
- 4.2.8 One reason for refusal was in relation to the RMA with the authority noting the "application requires approval for planning to convert the garage into habitable room/minor unit".
- 4.2.9 It appears the authority is of the view section 42A(2)(c) (see Appendix A) means building work cannot be exempt under Schedule 1 when it is carried out in breach of any other enactment. This provision was considered in a previous determination¹⁰ to which the authority was also a party:
- 7.2.7 I am not persuaded that the effect of not complying with the condition in section 42A(2)(c), that building work does not breach any other enactment, results in exempt building work losing its exempt status. Section 42A(2) lists a number of "conditions" for exempt building work. Some of those conditions are clearly intended to apply only after the building work is completed. For example, section 42A(2)(b) establishes requirements for exempt building work "after the building work is completed". Obviously, the effect of failing to comply with this condition cannot have any impact on the exempt status of the building work that has already been carried out.
- 7.2.8 The condition in section 42A(2)(c) is similar to section 51(2), the effect of which acknowledges that building work under a building consent may breach another enactment and the owner must still comply with the other enactment, but there are no specific consequences under the Building Act in respect of that non-compliance with another enactment. It would be surprising if Parliament intended there to be far more serious consequences for exempt building work that breaches another enactment than for building work under a building consent that breaches another enactment.
- 7.2.9 The condition in section 42A(2)(c) is still an important condition on exempt building work and able to be enforced by the issue of a notice to fix – requiring the owner to comply with the condition in section 42A(2)(c) that the building work comply with the other enactment.

¹⁰ Determination 2016/009 Regarding the issue of notices to fix and the refusal to issue a certificate of acceptance in respect of the conversion of a double garage over a boundary at 1338 Dominion Road, Mt Roskill, Auckland (Ministry of Business, Innovation and Employment) 23 March 2016.

- 4.2.10 Accordingly, building consent is not solely required because the building work breaches another enactment (in this instance the RMA for an unapproved minor unit), if a consent would not otherwise be required.
- 4.2.11 I note here regardless of whether the building work was exempt under Schedule 1 or required building consent, the applicant is not relieved from complying with other legislation, such as the RMA. Whether or not there is a contravention of the RMA falls outside the matters I can determine. The RMA should be enforced through measures of that Act, and not through the Building Act.

4.3 Is the building work exempt from requiring a building consent?

- 4.3.1 Having concluded the authority was correct to refuse to grant the exemption under Schedule 1(2) because the building work was already completed, I provide the following comments on whether the building work was exempt from the requirement of a building consent to assist the parties.
- 4.3.2 Based on the evidence submitted, I consider the removal of the garage door, installation of windows, door, and internal walls was carried out sometime between 1997 – 2004. This time period is based on the 2005 building consent, which shows this work as constructed. Therefore, the former Act is applicable and the list of exempt building work can be found under Schedule 3.
- 4.3.3 I am of the view the garage door removal and installation of windows and door, as well as construction of wall framing and cladding was not covered under the 1997 building consent.
- 4.3.4 I consider it likely the garage door was installed and then removed at a later date because:
- the authority's inspection records did not include any comments regarding the garage door not being installed
 - the authority granted the code compliance certificate without an amendment to the building consent noted on the building consent file¹¹
 - based on the submitted photographs, there was vertical timber cladding on the northeast elevation, which is different to the horizontal metal cladding on the other elevations and it is likely that if the garage door was changed at the time of construction, the same cladding would have been used.
- 4.3.5 The applicant has stated the lack of a lintel over the location of where the garage door was supposed to be installed is evidence one was not installed. I note the building would not have required a lintel over the garage door because the wall is not loadbearing. In this instance, a lintel would only be required over openings in loadbearing walls that support vertical loading from the roof. In this case, the roof is constructed from trusses that result in loadbearing walls to the southeast and northwest elevations.
- 4.3.6 In regard to the removal of the garage door and installation of the windows and doors, this work is not exempt under Schedule 3.

¹¹ If there had been changes from the building consent, I consider it likely the authority would have recorded these variations. Also, the authority would likely have required an amendment to the building consent before issuing the code compliance certificate. I note minor variations, which do not require an authority to issue an amended building consent for minor changes from the building consent, were only introduced in 2010.

- 4.3.7 In regard to the internal walls, Schedule 1(3)(f) states “Any wall (other than a retaining wall)...of a height not exceeding 2 metres above the supporting ground” is exempt from requiring a building consent. However, based on the submitted drawings, the walls are over 2 metres in height and therefore not exempt building work.
- 4.3.8 If the building work to remove the garage door, install the windows, door, and internal walls was not exempt building work, a building consent should have been obtained prior to the work being carried out.

5. What happens next?

- 5.1 A certificate of acceptance is the appropriate regulatory mechanism to address building work that has been carried out without a building consent first being obtained when consent was required. The applicant will need to provide sufficient information to the authority to establish the level of compliance achieved.
- 5.2 Alternatively, the applicant could choose to remove the building work; however this work may require a building consent.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine the authority correctly exercised its powers of decision in refusing to grant an exemption under Schedule 1(2) and I confirm that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 May 2018.

Katie Gordon
Manager Determinations

Appendix A: The relevant legislation

A.1 The relevant section of the Building Act discussed in this determination:

42A Building work for which building consent is not required under Schedule 1

(1) Despite section 40, subject to the conditions set out in subsection (2) and whether or not a building consent would otherwise have been required, a building consent is not required for building work in the following categories:

(a) building work described in Part 1 of Schedule 1...

(2) Subsection (1) is subject to the following conditions:

(a) the building work complies with the building code to the extent required by this Act:

(b) after the building work is completed, the building, —

(i) if it complied with the building code immediately before the building work began, continues to comply with the building code; or

(ii) if it did not comply with the building code immediately before the building work began, continues to comply at least to the same extent as it did then comply:

(c) the building work does not breach any other enactment:

A.2 The relevant sections from Schedule 1:

8 Windows and exterior doorways in existing dwellings and outbuildings

Building work in connection with a window (including a roof window) or an exterior doorway in an existing dwelling that is not more than 2 storeys or in an existing outbuilding that is not more than 2 storeys, except,—

(a) in the case of replacement, if the window or doorway being replaced has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or

(b) if the building work modifies or affects any specified system.

11 Internal walls and doorways in existing building

Building work in connection with an internal wall (including an internal doorway) in any existing building unless the wall is—

(a) load-bearing; or

(b) a bracing element; or

(c) a fire separation wall (also known as a firewall); or

(d) part of a specified system; or

(e) made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar.